4-7.000
IMMIGRATION LITIGATION

4-7.010
Immigration Litigation -- Generally

The Office of Immigration Litigation litigates in the federal district courts and circuit courts of appeals on behalf of the Immigration and Naturalization Service, the Department of State, the Department of Labor, and all other agencies involved in the regulation of aliens seeking to enter or remain in the United States. Additionally, the Office is responsible for litigation involving citizenship and passport matters, as well as the employer sanctions/employment authorization provisions of the Immigration Reform and Control Act of 1986 (Pub.L. No. 99-603, 100 Stat. 3359), as amended.

Immigration litigation may be either defensive or affirmative in character. No affirmative civil immigration suit should be instituted by the United States Attorney without prior consultation with the Office of Immigration Litigation. Copies of all immigration-related complaints and other pleadings served upon the United States Attorney should be promptly forwarded to the Office, including petions by aliens for habeas corpus. Similarly, the Office shall endeavor to provide prompt notification to United States Attorneys of significant developments concerning aliens involved in federal court litigation in their districts. Certified records of proceedings before immigration judges are prepared by the Executive Office of Immigration Review; requests for such records should be made through the Office of Immigration Litigation.

For alien-related litigation, the principal governing statute is the Immigration and Naturalization Act of 1952, *as amended*, 8 U.S.C. §§ 1101, *et seq.*, which establishes critical distinctions between aliens based upon their status as immigrants or nonimmigrants and, until 1996, based upon whether the individual in question has "entered" the United States (a legal fiction which resulted in separate avenues of deportation and exclusion for the expulsion of aliens lacking authority to enter/remain in the United States). Under recent reforms, "admission" has replaced "entry" as the pertinent inquiry. Special statutory provisions limit the courts' jurisdiction to review immigration disputes. *E.g.*, 8 U.S.C. § 1105a, replaced by 8 U.S.C. 1252, as amended. The Immigration and Nationality Act was significantly rewritten by the Immigration Reform and Immigrant Responsibility Act of 1996, Pub.L. 104-828, 110 Stat. 3009, much of which became effective April 1, 1997.

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4-7.100 Reporting of Decisions

The outcomes of all civil proceedings arising under the immigration and nationality laws (including the disposition of habeas corpus petitions by aliens) should be reported to the Office of Immigration Litigation. In all cases in which the decision is adverse to the government, copies of the pleadings and other documents, except insofar as previously supplied to the Office, should be promptly submitted along with an appeal recommendation. *See* USAM Title 2, Appeals.

United States Attorneys should promptly advise the appropriate District Directors of the Immigration and Naturalization Service of all decisions and interlocutory orders in litigation to which the Service is a party. Such notification should be particularly prompt in the case of an adverse decision or interlocutory rulings in which an appeal, rehearing en banc or certiorari might be taken or sought. Timely notification will enable the General Counsel to formulate the Service's recommendation to the Department with respect to any further action which might be taken in the litigation.

Similarly, prompt notification should be given to appropriate officials of the Departments of Labor and State of decisions or rulings in immigration and nationality cases whenever either Department is a party to the action.

4-7.200 Revocation of Naturalization

No suit shall be instituted by the United States Attorney to revoke naturalization under 8 U.S.C. § 1451 without prior consultation with the Office of Immigration Litigation. Notwithstanding that under 8 U.S.C. § 1421(b) jurisdiction also lies in various courts of the states, all such actions shall be filed in the federal district courts. There is no objection to the payment of the expenses of filing in state courts certified copies of judgments in accordance with 8 U.S.C. § 1451(f).

In all cases involving the revocation of naturalization, service may be had upon absentees from the United States or the judicial district in which the defendant last had his/her residence by publication or by any other method permitted by the laws of the state or place where the suit is brought. If the state statute permits service upon absentees by registered mail only, no publication is necessary. If service can only be effected by publication, publication must be in strict compliance with the state statute.

Title 8 U.S.C. § 1451(f) provides that a person holding a certificate of naturalization or citizenship which has been canceled under the provision of that section shall, upon proper notice, surrender the certificate to the Attorney General. All complaints for revocation of naturalization filed pursuant to Section 1451 should contain a demand that the certificate of naturalization be surrendered to the United States Attorney, and all proposed orders to be signed by the court in such cases should provide for surrender of the certificate of naturalization to the United States Attorney.

Upon receipt of the certificate, the United States Attorney should forward it to the District Director, Immigration and Naturalization Service, who has jurisdiction over the area in which the certificate is surrendered.

In proceedings under 8 U.S.C. § 1451(d) that involve persons who are outside of the United States, the United States consular officer in the area, as the representative of the Attorney General, will demand surrender of the certificate.

4-7.300 Plea Agreements Involving Deportation, Exclusion, or Removal

United States Attorneys should also be cognizant of the sensitive areas where plea agreements involve the deportation, exclusion, or removal of aliens. The regulation at 28 C.F.R. § 0.197 provides that,

> The Immigration and Naturalization Service (Service) shall not be bound, in the exercise of its authority under the immigration laws, through plea agreements, or other agreements with or for the benefit of alien defendants, witnesses, or informants, or other aliens cooperating with the United States Government, except by the authorization of the Commissioner of the Service or the Commissioner's delegate. Both the agreement itself and authorization must be in writing to be effective, and the authorization shall be attached to the agreement.

Notification should also be provided to the Office of Immigration Litigation.